

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEANNA JOHNSON

Plaintiff,
vs.

FORD MOTOR COMPANY,
a Delaware corporation;

Defendant.

Carol A. Laughbaum (P41711)
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**PLAINTIFF'S OBJECTION TO DEFENDANT'S SUNDAY
SEPTEMBER 10, 2023 DEPOSITION NOTICE FOR A
SEPTEMBER 12, 2023 TRIAL DEPOSITION, AND MOTION FOR A
PROTECTIVE ORDER**

Plaintiff DeAnna Johnson, by her attorneys Sterling Attorneys at Law, P.C., objects to the deposition notice issued by Defendant on Sunday September 10, 2023, for a trial deposition to take place on September 12, 2023, and moves for a Protective Order pursuant to Fed R Civ P 32 providing that the deposition not take place, and in support states as follows:

1. Trial in this matter begins on September 14, 2023.
2. On September 10, 2023, a Sunday, Defendant Ford issued a Notice of Deposition indicating it intended to proceed with the trial deposition of one of its 33 “may call” witnesses on Tuesday, September 12, 2023, for the reason that Ford “just learned” that the witness is getting married on September 17, 2023 and will be unavailable to testify live at trial.

3. Out of an abundance of caution, Plaintiff has not included in this filing the name of this person given the Court’s previous ruling requiring redaction (from trial materials) of the names of female co-workers of the harasser, Mr. Rowan. This potential witness never worked on a line reporting to Rowan. Upon information and belief, the scope of her testimony would be that she trained under Rowan for two days and had no issues with his behavior.

4. Plaintiff moves for a protective order for, among other reasons, the extreme untimeliness of this attempt to schedule a trial deposition. If Ford truly intended to call this person as a trial witness, it would have known of her wedding date long ago.

5. In addition, Plaintiff’s Counsel is extraordinarily busy with trial preparation, and would be prejudiced by having to drop important preparations and divert her time and attention to a last-minute deposition of an, at best, marginally relevant peripheral witness.

6. Fed R Civ P 32(a)(5)(A) provides that a deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Fed R Civ P 26 (c)(1) requesting that it not be taken... and this motion was still pending when the deposition was taken.

7. Under Fed R Civ P 32, Plaintiff seeks a Protective Order that this deposition not take place or be used at trial for the following reasons:

- a. The extreme untimeliness of Defendant's eleventh-hour attempt to conduct a trial deposition and the prejudice to Plaintiff and her counsel;
- b. The witness is not "unavailable" as defined under Fed R Civ P 32 (a)(4);
- c. Defendant has additionally failed to comply with Fed R Civ P 32 (4)(E). Under that provision, a deposition can be used at trial if the court finds "on motion and notice, that exceptional circumstances exist making it desirable – in the interest of justice and with due regard to the importance of live testimony in open court – to permit the deposition to be used." And, even if Defendant had complied by filing a motion, these criteria do not exist.

8. Plaintiff certifies that she has in good faith attempted to resolve this issue without the court's intervention. Defendant's response to those efforts included, "The deposition notice stands. You ignore it at your own peril."

WHEREFORE, Plaintiff respectfully requests that a protective order issue pursuant to Fed R Civ P 32(a)(5)(A) providing that the deposition may not proceed.

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Carol A. Laughbaum

Carol A. Laughbaum (P41711)

Attorneys for Plaintiff

33 Bloomfield Hills Pkwy., Ste. 250

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Dated: September 10, 2023

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**BRIEF IN SUPPORT OF PLAINTIFF'S OBJECTION TO
DEFENDANT'S SUNDAY SEPTEMBER 10, 2023 DEPOSITION
NOTICE FOR A SEPTEMBER 12, 2023 TRIAL
DEPOSITION, AND MOTION FOR A PROTECTIVE ORDER**

Plaintiff relies on her motion, Fed R Civ P 32, and the records and files in this cause.

PROOF OF SERVICE

I certify that on September 10, 2023, I filed the foregoing paper with the Clerk of the Court using the ECF system, which will electronically send notification to all counsel of record.

/s/Carol A. Laughbaum
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Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By:/s/Carol A. Laughbaum

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